

**REMARKS**

**I. 35 U.S.C. § 112**

In the Office Action, the Examiner has rejected Claims 11-12 and 24-25 under 33 U.S.C. § 112, first and second paragraph. The Examiner contends that the phonetic spelling of certain ingredients does not lend one of ordinary skill in the arts to make the soup. Applicant respectfully disagrees with the Examiner. However, in order to expedite prosecution of the subject patent application, Applicant has amended the specification to include the conventionally known names for the Chinese herbs used in the present invention. Applicant has further cancelled the original claims and added new Claims 26-46. The new claims also include the conventionally known names for the Chinese herbs used in the present invention. Thus, Applicant respectfully submits that the Examiner's rejection of Claims 11-12 and 24-25 has been effectively traversed. Such action is earnestly solicited.

**II. 35 U.S.C. § 102(b)**

In the Office Action, the Examiner has rejected Claims 1 and 14 under 35 U.S.C. § 102(b). The Examiner alleges that Claims 1 and 14 are clearly anticipated by Su, CN1094243. Applicant respectfully disagrees. However, Applicant has cancelled original Claims 1-25 and replaced them with new Claims 26-46. New Claims 26-46 disclose a soup which contains natural herbs which is healthy for a consumer's diet and further helps to increase the

consumer's energy level of the consumer. The soup uses a unique combination of Chinese herbs in a range from about 1% to about 7% by volume of total composition. The Chinese herbs are used for adding additional flavoring to the soup and for increasing an energy level and muscle strength of the consumer. The Chinese herbs include herbaepimedii approximately .05% by volume; rhizoma cistanches approximately .05% by volume; radix angelicae sinensis approximately .004% by volume; radix codonopsis pilosulae approximately .05% by volume; astrogalus hoanglohy approximately .05% by volume; fructus lycii approximately .04% by volume; rhizoma aconiti approximately .04% by volume; dry ginger approximately .04% by volume; ganoderma lucidum approximately .05% by volume; ziziphi spinosae approximately .05% by volume; ginseng approximately .005% by volume; and cordyceps approximately .005% by volume. Su neither discloses nor anticipates the combination of Chinese herbs as disclosed above.

As the courts have ruled numerous times, anticipation does not exist unless a prior art reference shows each and every element, united in the same way to perform identical functions (emphasis added). *Penn Yan Boats, Inc. v. Sea Lark Boats, Inc.*, D.C.Fla. 1972, 359 F.Supp. 948, affirmed 479 F.2d 1328, certiorari denied 94 S.Ct. 66. See also, *Gillette Co. v. Warner-Lambert Co.*, D.Mass. 1988, 690 F.Supp. 115, and *B.W.B. Controls, Inc. v. U.S. Industries, Inc.*, E.D.La. 1985, 626 F.Supp. 1553, affirmed 802 F.2d 471. As Applicant has already stated in detail above, Su fails to disclose many of the Chinese herbs which Applicant have claimed.

Thus, Applicant respectfully submits the new Claims effectively traverses the Examiner's rejection of original Claims 1 and 14 under 35 U.S.C. §102(b) as allegedly being anticipated by Su. Such action is earnestly solicited.

III. 35 U.S.C. § 103(a)

In the Office Action, the Examiner has rejected Claims 1-25 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Sun, U.S. Patent 5,437,866. Applicant respectfully disagrees. As discussed above, Applicant's soup uses a unique combination of Chinese herbs in a range from about 1% to about 7% by volume of total composition. The Chinese herbs are used for adding additional flavoring to the soup and for increasing an energy level and muscle strength of the consumer. The Chinese herbs include herbaepimedii approximately .05% by volume; rhizoma cistanches approximately .05% by volume; radix angelicae sinensis approximately .004% by volume; radix codonopsis pilosulae approximately .05% by volume; astrogalus hoanglohy approximately .05% by volume; fructus lycii approximately .04% by volume; rhizoma aconiti approximately .04% by volume; dry ginger approximately .04% by volume; ganoderma lucidum approximately .05% by volume; ziziphi spinosae approximately .05% by volume; ginseng approximately .005% by volume; and cordyceps approximately .005% by volume. Sun neither discloses nor anticipates the combination of Chinese herbs as disclosed above. Thus, Applicant respectfully submits that the

Examiner's rejection of Claims 1-25 under 35 U.S.C. § 103(a) has been effectively traversed. Such action is earnestly solicited.

Applicant respectfully submits that Applicant's claimed invention is deserving of patent protection because it describes a useful and functioning apparatus which is patentably distinguishable over the prior art.

In conclusion, Applicants respectfully submit that this Amendment Letter, including the amendments to the Claims and Specification, and in view of the Remarks offered in conjunction therewith, are fully responsive to all aspects of the objections and rejections tendered by the Examiner in the Office Action. Applicant respectfully submits that he has persuasively demonstrated that the above-identified Patent Application, including Claims 26-46 are in condition for allowance. Such action is earnestly solicited.

If the foregoing does not place the case in condition for immediate allowance, the Examiner is respectfully requested to contact the undersigned for purposes of a telephone interview.

If there are any fees incurred by this Amendment Letter, please deduct them from our Deposit Account NO. 23-0830.

Respectfully submitted,



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